GEN. ROBERT EDWARD LEE

AND THE

Question of Treason and Perjury.

A VINDICATION

Based Exclusively on the Public Records of Northern States and Statesmen.

A VINDICATION

FROM A NORTHERN STANDPOINT

OF

GEN. ROBT. E. LEE

AND HIS

FELLOW-OFFICERS WHO LEFT THE UNITED STATES ARMY AND NAVY IN 1861,

FROM THE

NORTHERN CHARGE OF TREASON AND PERJURY.

BY

TALBOT SWEENEY.

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DEDICATION.

TO

MRS. CORNELIA MERCER SWEENEY

AND THE

R. E. LEE CAMP, NO. 1,

CONFEDERATE VETERANS.

MAY 29TH, 1890.

I now feelingly and tremblingly dedicate this humble little book to my beloved wife and the R. E. Lee Camp of Veterans, without the knowledge of either. Nothing, I am sure, could be more gratifying to my wife than to have her name honorably associated forever, if possible, with the veterans of the "Southern Confederacy," and, through them, with a cause for which she labored and suffered and sacrificed so much; and all this, too, so unostentatiously, so uncomplainingly, and so lovingly: a cause which she often says "is not dead, but sleepeth," and which will yet awaken to victory and to glory, and guide into a safe port an "Indissoluble Union of Indestructible States." May God in his infinite justice verify her prediction.

THE AUTHOR.

THE AMERICAN DOCTRINE OF ALLEGIANCE

FROM THE

Declaration of Independence, in 1776, to the Civil War Inaugurated by President Abraham Lincoln Against the States of the South, in 1861.

In the halls of both houses of the Congress of the United States, in public assemblies of the North, in the public press of the North, in pulpits of the North, and other northern sources, private as well as public, ever and anon, since the late civil war inaugurated by President Abraham Lincoln and his party adherents outside of Congress, and in gross violation of the letter and spirit of the Constitution of the United States, against the Southern States, we have heard and read, and do hear and read, the grave charge of Perjury and Treason preferred and denounced, without reason, but with passion, prejudice, and hate, against those noble and gallant officers of the old Federal army and navy who resigned their commissions in that army and that navy, at the call of their respective native Southern States, and fought for their rights and their sovereignty—chief among whom was the lamented ROBERT E. LEE.

It is our intention in what we have now to say briefly to notice this charge, and to justify the conduct of those patriotic and brave officers in that matter, upon the authority of Northern States and statesmen.

Endeavoring to be concise; intending truthfully to perform our promise, and to occupy you, in fact, for as brief a period as will be possibly consistent with a lucid discussion of our subject, we proceed at once with what we have to say, without

a formal introduction, our real desire and design being, "*Festinare in medias res*," and not to linger or loiter on the way. The great question, then, with General Lee and his fellow-officers who thus retired from the Federal army and navy was one of *allegiance*, at the time of the commencement of hostilities between their respective States of the South, and Abraham Lincoln backed by the Republican States of the North. As we do not intend in this discussion to argue upon our present relations to the Federal Power at Washington, you will see that we shall confine our remarks strictly to the period anterior to and up to the beginning of our late civil war. For it is certainly not our intention here to revive old issues or to open new issues; but simply to reason honestly and earnestly with those who may feel a real concern in the grand question itself, and in the refutation of the gravest accusations which can be brought against human character and conduct. Where, then, did the allegiance of the citizens of any one of the United States of America at the beginning of our late civil war ultimately reside?

In reviewing the early history of our country we learn that "thirteen regularly organized, distinct, and, to many purposes, independent commonwealths were connected, respectively, by the bond of a sort of confederacy, or allegiance, if you please (the name is immaterial), with their common mother country, England. Everything, however, that can constitute a separate and perpetual body politic was to be found in each of them before the great revolution or schism—legislation, judicature, and a perfect community of interests among the inhabitants of a designated territory." Indeed, we find in each, as distinct from every other of the thirteen, a social compact as clearly defined as it is possible to conceive. Even Judge Story, the leading champion of consolidation, out of a due regard to the truth of history, has the candor to say that, "though the colonies had a common origin, and owed a common allegiance, and the inhabitants of each were British subjects, they *had no direct political connection with each other*. Each was independent of all the others; each, in a limited sense,

was sovereign within its own territory. There was neither alliance nor confederacy between them." Authority upon this point might be multiplied *ad infinitum*, but this would be needless here. A dispute concerning an assumed right of England over this body politic, as just set forth, is determined by a majority of its citizens against her demands. It is further declared, by this same majority, that this colony, if you please, no longer owes any allegiance to a government which has affected to set at naught the principles of the great constitutional compact of the British Empire. And this is the decision of the majority of the people in each of these thirteen bodies politic or colonies, acting each for itself and upon its own responsibility. That this was the *status* of Virginia there can be no doubt. Her resolution in convention on the 15th of May, 1776, proves it: "*Resolved*, *unanimously*, That the delegates appointed to represent this colony in the General Congress be instructed to propose to that respectable body to declare the United Colonies free and independent States, absolved from all allegiance to or dependence upon the Crown or Parliament of Great Britain; and that they give the assent of this colony to such declaration, and to whatever measures may be thought proper and necessary by the Congress for forming foreign alliances and a confederation of the colonies, at such time and in the manner as to them shall seem best: provided the power of forming government for and the regulations of the internal concerns of each colony be left to the respective colonial legislatures."

In Ware and Hylton, 3 Dallas, 199, Judge Chase says: "I consider the declaration of independence as a declaration, *not that the United Colonies jointly, in a collective capacity, were independent States, but that each of them was an independent State;* that is, that each of them had a right to govern itself by its own authority and its own laws, *without any control from any other power upon earth.*"

It would seem plain, then, from the opinion of this eminent authority that the *status* of the body politic before described was not affected by the declaration of independence. It was

the majority of the people of each State, in the name of the whole people of each State, that declared on the 4th of July, 1776, the indisputable fact to the world, out of a decent regard to the opinions of mankind, that they owed no allegiance to the British Government; that it had been *ipso jure* extinguished by its own infractions of the great constitutional compact of the empire, and its total disregard of the established political principles therein set forth.

The arbitrament of the sword is resorted to, there being no common umpirage established by the contending parties to the dispute, to solve it peaceably between them, and the issue of the war is favorable to each of the revolutionary bodies politic or colonies, and so confirmed by the treaty of peace between the mother country and the respective colonies by their several names and in their several capacities, as free, sovereign, and independent States. The first article of the provisional agreement of the 30th of November, 1782, sets forth in clear and explicit terms the following: "His Britannic Majesty acknowledges the said United States, viz: New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign, and independent States; that he treats with *them* as such, and for himself, his heirs, and successors relinquishes all claims to the government, property, and territorial right of the same, and every part thereof." All connection with the mother country ceases, and the internal government of each State goes on as it did before. By what process of reasoning is it attempted to be made out that the majority of the body politic, which had thus determined the question of allegiance in the name of the State, and thus maintained it by force, had not a right to decide upon this most vital concern, as it was wont to do upon all others, at the time of the breaking out of our late civil war?

As an abstract proposition it is undoubtedly true and universally admitted that the allegiance of the citizen, primary and paramount, is due to the State or sovereign:—

That obedience from the citizen is due to the government as it represents the sovereign, and as it is ordained by the sovereign, and, of course, no obedience can be claimed by the government inconsistent with the allegiance due the sovereign.

Admit, then, the sovereignty of the State, and you inevitably admit also its correlative right to the allegiance of its citizens.

In every page of the journals of the old Congress, both before and after the adoption of the articles of confederation, the separate sovereignty and independence of each State stands out in bold relief.

We find the same great fact through the pages of the Federalist, which is to the present moment accepted as the book of constitutional authority. In No. 31 of that great work, prepared by Hamilton, Jay, and our own Madison, who is remembered as the Father of the Constitution *as it was*, we read: "The State governments, by their original constitutions, are invested with complete sovereignty." Again, in No. 32: "The State governments clearly retain all the rights of sovereignty which they before had, and which were not by that act exclusively delegated to the United States." Again, in No. 52: "The rule that all authorities of which the States are not explicitly divested in favor of the Union remain with them in full vigor, is clearly admitted by the whole tenor of the instrument which contains the articles of the proposed constitution."

John Dickinson, the celebrated friend and advocate of the then proposed constitution, in No. 9 of his Fabius Letters, asks: "What bodies are there in Britain vested with such capacities for inquiring into, checking, and regulating the conduct of national affairs as our sovereign States?"

These extracts might be multiplied to clearly show that in the whole tenor of the discussions of the period nothing was further from the minds of the friends of the proposed constitution than the destruction of the State sovereignties. If the States themselves, by any plain, solemn act to be found anywhere in the whole history of legislation, renounced their sovereign character as States, and surrendered it and the resultant allegiance due from the citizen to the Federal Govern-

ment as the only paramount sovereign at any time prior to the late civil war, then we must resign our argument as untenable. If the fact existed, doubtless it would long since have been traced out to view by the advocates of consolidation. The Constitution of the United States surely nowhere mentions even once the word sovereign.

The Supreme Court of the United States has over and over again affirmed the sovereignty of the several States of the Union. "They (the several States) form a confederated government; yet the several States retain their individual sovereignties." 2 Peters, 579; 12 Wheaton, 334. Again: "The powers retained by the States proceed not from the people of America, but from *the people of the several States*, and remain after the adoption of the Constitution what they were before." 4 Wheaton, p. 193. Judge Baldwin, a most distinguished and certainly one of the ablest justices of the United States Supreme Court, expressly said: "The Constitution is a cession of *jurisdiction only*, made by the people of a State." Sovereignty, then, according to the great authority of the Supreme Court of the United States, was neither ceded, nor delegated, nor surrendered, nor renounced, by the States of this Union or their people; they ceded "jurisdiction only" by the Constitution.

Senator Andrew Johnson, on the 18th day of December, 1860, declared in the Senate of the United States that "the Federal Government possesses no sovereign power. All its powers are derivative and limited; and those that are not expressly granted are reserved to the States respectively. Congress has no sovereign power. All its powers are derived; it can exercise no single primitive, original power." By this authority, then, we see, the powers of the Federal Government are alone delegated powers—delegated by the several States which composed the Union and established the Government thereof. And we have the high sanction of Mr. Madison for saying that "a delegated power is not a surrendered power." In that same great speech Senator Johnson said: "I do not believe the Federal Government has the power to coerce a State; for by the eleventh amendment to the Constitution of

the United States it is expressly provided that you cannot even put one of the States before one of the courts of the country as a party." Such as I have quoted to you is the very language of Senator Andrew Johnson from his seat in the Senate of the United States, delivered at the eve of the great civil convulsion, and who afterwards, in the very zenith of that war, was nominated and elected by the Northern States as Vice-President of the Northern Union, on the same ticket with their chosen champion, Abraham Lincoln, and who, upon the death of President Lincoln, became the President of this same Northern Union, and, upon the reconstruction of the Union, was President of the whole Union, as it again exists at this day. High authority on this point, for the North, at least, we should say.

This was the very position taken by that ablest of American statesmen, President Buchanan, and for it he was soundly and sorely condemned and denounced by the very party that so handsomely honored and rewarded Senator Andrew Johnson.

Now let us inquire how some of the most prominent of our northern sister-States were wont to answer the great question of Allegiance propounded in the beginning of this discussion. And first we will commence with our sister,

Massachusetts.

The oath required by her on March the 2d, in the year 1780, of her officers, was the following, to wit: "I, A B, do truly and sincerely acknowledge, profess, testify, and declare that the Commonwealth of Massachusetts is, and of right ought to be, a free, sovereign, and independent State; and I do swear that I will bear true faith and *allegiance* to the said Commonwealth, and that I will defend the same against traitorous conspiracies and all hostile attempts whatsoever." We see from this part of the oath administered by the State of Massachusetts, *after the great Declaration and during the Confederation*, to her officers, what she thought about this matter of Allegiance, *and to whom it was due.* Now let us see if, in her opinion, there was any power residing anywhere that could divest her of any

portion of the allegiance which her citizens acknowledged that they owed to her.

Upon this point we will quote another part of the same oath, to wit: "And I do further testify and declare that no man or body of men hath or can have any right to absolve or discharge me from the obligation of this oath, declaration, or affirmation," &c., &c.

The portions of the oath here quoted may be found in the first article of the sixth chapter of the Constitution of Massasetts—March 2, 1780.

By an amendment bearing date June 5, 1821, Art. VI., the following was substituted for the oath of 1780, to wit: "I, A B, do solemnly swear that I will bear true faith and *allegiance* to the Commonwealth of Massachusetts, and will support the Constitution thereof. So help me God." In this oath, thirty-two years after the Constitution of the United States had gone into effect, we do not find the slightest allusion either to the General Agent at Washington or to the Constitution of the United States. No such solecism in language as a divided allegiance can we discover in this form of her adopted oath, but here is a paramount and exclusive right to allegiance claimed by Massachusetts of her citizens, and acknowledged by her citizens to Massachusetts. If it was in anything different from this at the breaking out of hostilities we are not aware of it.

On the 30th day of January, 1787, General Lincoln, commander-in-chief of the military forces of Massachusetts in the field during the Shays' rebellion, addressed a letter to Shays and his officers, of a firm and dignified yet humane character, informing them that if they laid down their arms and took the oath of allegiance to the Commonwealth of Massachusetts they would be recommended to the General Court for mercy. Nothing said here about any allegiance to the old confederation existing at that time.

Again: When she ratified the Constitution of the United States in her convention of 1788 she did so with a requisition for the adoption of sundry suggested amendments and altera-

tions, the chief of which, in her own language, was, "That it be explicitly declared that all powers not *expressly delegated* by the aforesaid Constitution are reserved to the several States, to be by them exercised." Did she, then, by her acceptance of the Constitution of the United States, transfer to the General Government her right to the exclusive allegiance of her own citizens? If so, let her point it out in any provision contained in the said Constitution. If so, she will please show to the world her *explicit declaration* of her *express delegation* of that sovereign right, either in her form of ratification of the Federal Constitution or in the Constitution itself.

Mr. Samuel Adams, a distinguished and honored son of Massachusetts in Revolutionary times, pronounced her suggested amendment, as above recited, to be "consonant with the second article in the present Confederation, that each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by the Confederation expressly delegated to the United States in Congress assembled."

In the same convention to consider the adoption of the Federal Constitution, Fisher Ames, one of her most cherished sons, who stood in the first rank as statesman and orator, and who was afterwards a distinguished member of Congress during the whole of President Washington's administration, said: "It is necessary to premise that no argument against the new plan has made a deeper impression than this, that it will produce a consolidation of the States. This is an effect which all good men will deprecate." Again, he says: "The senators represent the sovereignty of the States." Again, he says: "A consolidation of the States would ensue, which, *it is conceded*, would subvert the new Constitution, and against which this very article, so much condemned, is our best security. Too much provision cannot be made against a consolidation. The State governments represent the wishes, the feelings, and local interests of the people. They are the safeguard and ornament of the Constitution; they will protract the period of our liberties; they will afford a shelter against the abuse of power, and

will be the natural avengers of our violated rights." And once again said he: "This article seems to be an excellence of the Constitution, and affords just grounds to believe that it will be in practice, as in theory, a federal republic."

In January, 1788, in the Convention of Massachusetts, alluding in his speech to the checks upon any attempted usurpation of the Federal agent, Judge Parsons used the following language: "But, sir, the people themselves have it in their power effectually to resist usurpation without being driven to an appeal to arms. *An act of usurpation is not obligatory—it is not law.* Any man may be justified in his resistance to it. Let him be considered as a criminal by the General Government, yet his own fellow-citizens alone can convict him. They are his jury; and if they pronounce him *innocent*, not *all the powers of Congress can hurt him;* and innocent they certainly will pronounce him if the supposed law which he resisted was an act of usurpation." In this opinion of Judge Parsons the authority to decide upon the conduct of the "General Government" resides in the citizen himself; and if he should conclude to resist its acts, "*not all the powers of Congress can hurt him.*" Why? Because the people of the State of Massachusetts, if he were a citizen of her's, would interpose State authority to shield him, to whom she would consider her protection to be due in return for the allegiance which she demanded from him.

According to this view of Judge Parsons, there could be no allegiance due from the citizen of Massachusetts to the "General Government." If so, the people of Massachusetts would be guilty of a gross usurpation to *attempt* even to shield the man of Massachusetts from the penalty denounced against him for daring to resist an act of his sovereign—the "General Government." For in this case the "General Government" would certainly be his sovereign. Now, if the citizen, pursuant to the doctrine laid down by Judge Parsons in the speech referred to, has the right to decide between himself and the "General Government," surely he could not hesitate in his resistance to that power when the decision was made by his own

State that her sovereignty was being invaded, and the command came down to him from her to resist that invasion by all the means which she might place at his command. If he did hesitate, he would stand to her in precisely the relation in which *Tories stood in the Revolution of '76;* and for this violation of his allegiance to her, *treason* would, *indeed*, be pronounced against him. This, we think, is the legitimate conclusion from the position of Chief-Justice Parsons.

And just here allow us to remind the reader that Chief-Justice Parsons, in his day and generation, was called "the giant of the law." He was a member of the convention which framed the Massachusetts Constitution, as well as of that which ratified the Federal Constitution, in which he delivered the speech from which we have taken the above extract. He succeeded Chief-Justice Dana, and continued to preside over the deliberations of the Supreme Court of his State down to the close of his life, on the 30th day of October, 1813, at the venerable age of sixty-three (63), and left behind him the reputation of being "one of the most learned and able judges that ever appeared in any court."

Surely such high authority on constitutional law cannot fail to command the respect and confidence of even the Massachusetts of the present day.

This doctrine of State sovereignty and consequent State allegiance was carried so far by that State in those patriotic times that in 1789, when President Washington visited her, the patriot Hancock, at the time her Governor, out of a most tender and scrupulous regard to State rights and State dignity, took the position with much feeling, it is told, that as the representative of State sovereignty in his own dominion he should be first visited by the President of the United States. It is true that he yielded his own views of etiquette on that occasion, but those who knew him best thought that he would hardly have done so in honor of a less man than George Washington. We are told by his biographer (the elder Adams), in Sanderson's series, that Hancock, "in favoring a confederate republic, did not vindicate with less scrupulousness the dignity of the

individual States; and that in a suit brought against the State of Massachusetts in the court of the United States, in which he was summoned as Governor to answer the prosecution, he *resisted* the process, and maintained inviolate the sovereignty of the Commonwealth." And it is worthy of notice that Mr. Adams states these facts approvingly. It was this same John Hancock who, when reluctant to accept the chair of the first Continental Congress in 1775, as the successor of Peyton Randolph, who was stricken with apoplexy in October, 1775, Ben. Harrison, of Virginia, took him up in his arms and placed him in it, exclaiming at the same time, "We will show Mother Britain how little we care for her by making a Massachusetts man our president whom she has excluded from pardon by a public proclamation." It was a high eulogy, indeed, on him, both as a statesman and patriot, that when the British Government offered pardon to all the rebels, as it suited her to style our Revolutionary fathers, of all their offences, "Hancock and one other (Samuel Adams) were the only persons to whom this grace was denied."

Again: On the 3d of February, 1808, the Senate of that State officially declared that "on such occasions (the embargo was the occasion) passive submission would, on the part of the people, be a breach of their allegiance, and on our part treachery and perjury. For the people are bound by their allegiance, and we are additionally bound by our oaths, to support the Constitution and the State, and we are responsible to the people and to our God for the faithful execution of the trust."

But this is not all. In the following year (1809) the Legislature of Massachusetts "*Resolved*, That the said act of Congress passed on the 9th of January, in the present year, for enforcing the act laying an embargo, and the several acts supplementary thereto, are, in the opinion of this Legislature, in many respects *unjust*, *oppressive*, and *unconstitutional*, and not legally binding on the citizens of this State." What!! Not legally binding on the citizens of this State!! Would this have been so if the citizens of Massachusetts had in the slightest degree owed allegiance to the General Government at

Washington? We have high authority for saying that allegiance means "the tie which binds a citizen to be faithful to the sovereign power, wherever that power may reside"; and that sovereignty means "that ultimate power in the State which no other power can rightfully control within its territorial limits."

In the third session of the Eleventh Congress of the United States, assembled on the 3d of December, 1810, among the political and constitutional questions of interest which attracted the attention of Congress was the erection of Orleans Territory into a State. Louisiana was applying for admission into the Union as a State. She was opposed in this exclusively by Northern members on constitutional grounds. The great constitutional objection urged by them at the time was that new States could not be formed out of territory not originally belonging to the United States—that is, out of territory acquired by the Union since the adoption of the Constitution. Then it was that the Jeffersonian school of strict construction best suited the North and her representatives in Congress. Mr. Quincy, of Massachusetts, took a very distinguished part in this debate, and was justly regarded as the great embodiment of Northern sentiments and feelings when he hotly contended that this was a violation of the Constitution, which, in its grossness and violence, would lead to a dissolution of the Union, "amicably if they might, forcibly if they must." And an accurate historian of the Constitution of the United States tells us that "this was the earliest indication of the doctrine of secession, which, upon its announcement, fell like an electric shock upon the Congress of the nation." And, anomalous as it may appear, this would-be agitator of secession and dissolution from Massachusetts was called to order by the distinguished delegate, Mr. Poindexter, from the Mississippi Territory, stating that no member of the House ought to be permitted to incite any portion of the people to insurrection and a dissolution of the Union. Mississippi, when yet a territory, lecturing Massachusetts against her threatened "*Rebellion*" *!!* Mr. Varnum, the Speaker of the House at that time, and a Massachu-

setts representative, decided that his colleague, Mr. Quincy, was in order, no one having the right to object to the opinion that the admission of Louisiana would lead to a dissolution of the Union. Here, then, we have this distinguished representative of Northern sentiments and feelings, Mr. Quincy, contending for the very strictest construction of the Constitution of the Union, and claiming that the clause in the Constitution authorizing the admission of new States must, from the very context, be interpreted to relate only to the formation of new States within the limits of the Union as then existing. This was, in truth, a mere abstraction, as Mr. Clay would say (not a Virginia abstraction, however), to the advocacy of which political considerations, blended with sectional jealousy, were the chief incentives.

And yet, unless this narrow and mistaken policy to restrict our territorial limits should be adopted, in accordance with the sectional views and interests of the Northern and Eastern States, a dissolution of the Union was threatened "amicably if they might, forcibly if they must." How precisely did Mr. Quincy, in behalf of his section, employ the language of secession!

This was the identical Josiah Quincy who afterwards opposed, with much vehement power, the embargo, and confessed that, in connection with some of his colleagues, he had sent expresses to the Eastern States announcing the undoubted establishment of the embargo, and said: "We did it to escape into the jaws of the British lion and of the French tiger, which are places of repose, of joy, and delight, when compared with the grasp and fang of this hyena embargo."

Do these official acts of the Senate and Legislature of Massachusetts, the language of Chief-Justice Parsons and Fisher Ames in 1788 in State Convention, General Lincoln's offer of mercy to her rebellious citizens in 1787, and the solemn oaths prescribed in her organic law from March 2, 1780, down to the year 1861 (we are not aware of any change in this particular to the present moment), in any manner conflict with the definitions of allegiance and sovereignty given in a prior part of

this discussion? Do they not, on the contrary, unqualifiedly adopt and sustain them?

These evidences are by no means all from that distinguished State, but we deem them sufficient to remind her officials, editors, divines, statesmen, and other citizens, that in throwing their missiles at Southern Heroes, Patriots, and Martyrs, they may discover a "*glass house*" at home that needs to be guarded. We might easily show that her own cherished Webster—"Defender of the Constitution"—was not altogether blameless upon this subject, *to her modern vision.* We might exhibit him as abetting proceedings in his State going to sustain her ancient view of State allegiance and State sovereignty, and industriously employing his talents in embarrassing the Federal councils and paralyzing the powers of the Federal Government—in holding up President Madison before the country and the world as an "*imbecile menial of France.*"

And this bitter, unjust, and unfeeling language was applied to that brave, wise, energetic, and patriotic executive, President Madison, for recommending to the constituted authorities of the United States, in congress assembled, a declaration of hostilities against an implacable and haughty foe—England—for her cruel and despotic policy and practice of "impressment" and her "orders in council," by which our citizen sailors were enslaved and scourged, and compelled to fight the battles of their oppressors against even their own unoffending and defenceless countrymen, and our harbors insulted and outraged, and our commerce with fifty millions of friendly people most wantonly and ruthlessly plundered and spoliated in every sea. Yes, astounding as it may now, in this day, appear, simply because he recommended a war for the liberty of our own citizens on the high seas, for our national honor and interest, for our free and rightful commerce, in accordance with the law of nations, with our foreign friends, and for the preservation of our republican form of government against the machinations of insolent and whimsical tyranny, Daniel Webster denounced James Madison, "the Father of the American Constitution," and the then President of the United States,

as an "*imbecile menial of France.*" And this, too, in the face of the fact, well known to him at the time, that the United States, from the pure and simple love of peace alone, had actually drank the chalice of British outrage, insult, injury, insolence, and depredation to the very last dregs. At the remembrance alone of such scenes enacted by Great Britain in that day, even at this distance of time, the American bosom glows fiercely with indignation, and can hardly keep down the horrid feelings of vengeance. We think we should have no difficulty in telling where this distinguished champion of the "Proclamation and Force Bill" would have been found had Massachusetts, instead of South Carolina, been the devoted victim of Federal domination in 1833, and New England instead of the South in '61. The country would have learned from him something more of the Eastern doctrines of State Sovereignty, State Allegiance, and a Northern Confederacy.

But, peace to his ashes! For, although his harsh and unjust criticism upon President Madison, when remembered, is not to be patiently endured, yet it would be a kind of sacrilege as well as presumption to detract from the deserved glory of a man who, in his life, speeches, and writings, advanced human nature to high perfection and added new lustre to the already splendid fame of his country. We shall ever warmly cherish the name and memory of Daniel Webster, and claim an interest in him as well as in James Madison. The adopted son of Massachusetts and the son of Virginia were alike the sons of America, and their splendid fame equally belongs, not only to their own country, but to the civilized world. This is somewhat a digression. We did not intend to introduce it. But since it is here, and faithfully represents the truth of history, let it remain for its truth.

Neither Massachusetts then, nor her sons, surely, should have rebuked that noble band of Southern patriots and martyrs who, in rallying to the defence of their respective States, were but following out her own teachings in pure State allegiance and lofty patriotism. If those gallant souls are to be forever infamously decried as "traitors and perjurers," Massachusetts

and her citizens should, at least, be silent. There was nothing in their conduct that should have horrified her, who absolutely absolved her own citizens from all obedience to the "General Government," and who in her "Frame of Government" solemnly declared herself to be a "free, sovereign, and independent body politic, or State, by the name of *The Commonwealth* of Massachusetts." With her this great doctrine of allegiance has been forever decided; it has passed into the general frame of her polity; it is by her laws *res adjudicata*—a settled principle—conceived and established, as we have seen, by her public record in her ancient days; those days, which may have passed from her memory, when Virginia, sacrificing the favor of the British Crown, endured side by side with her a common suffering, battled for a common cause, and rejoiced in a common and glorious triumph—a victory which thrilled the world; for the proud British Lion lay prostrate under the talons of the young American Eagle at Old Yorktown. Oh! that Massachusetts had enabled us to say of her in 1861: "*Moribus antiquis Stat Roma!*"—"Rome stands by her ancient morals!"

Maine.

Maine, we know, was originally a part of Massachusetts and formed out of her territory, and her admission into the Union as a separate sovereign State was completed on the 15th of March, 1820; so that, of course, she was a part of Massachusetts during that portion of her history which we have just recited. What said the State of Maine on this great question in the year 1831, when "*resolving*" on the subject of the treaty or convention between the United States and Great Britain had in the year 1827, for establishing the northeastern boundary of the States by the decision of a common umpire? Now, a treaty with a foreign nation, we all know, is termed by the Constitution of the United States "the supreme law of the land," and agreed to be such by the States—the States themselves made it so. Yet, nevertheless, let us notice some of the language of that State through her legislative body on the memorable occasion of her condemnation of the said treaty. "The State

of Maine, by the force and effect of the Act of Separation from Massachusetts, became vested with the Rights of Sovereignty of Massachusetts." Again: "Among the rights and powers not delegated (to the United States) are the rights and powers in the States respectively to *retain* their entire *territories*, *and of exercising* Sovereign Power over them." In denying any power to Congress under the Constitution of the United States to dismember a State, she said with great emphasis that "The exercise of such a power *ought to be*, and always will be, *resisted* by a free people."

Ah! dear old Virginia thought so, too! She, also, had seen that provision in the Constitution of the Union which declares that "No new State shall be formed or erected within the jurisdiction of any other State without the consent of the legislatures of the States concerned, as well as of Congress." But what did all this avail her in the presence of an armed usurpation, in which this very State of Maine bore a conspicuous part?

These things, and more like them, were said by Maine on the 28th of February, 1831. But, again, on the 30th March, 1831, in another report on the same subject drawn up by her, pursuant to a special message of her Governor, she made the following solemn declaration: "And, further, should the United States adopt the document as a decision, it will be in violation of the constitutional rights of the State of Maine, which she cannot yield." Now, what did this language mean? If it meant anything, it meant fight. But fight whom? The United States Government, of course. With what force? The citizens of Maine, over whom she claimed to be sovereign, and from whom she demanded undivided allegiance and obedience in peace and in war.

And to carry out this intention more successfully she deemed it necessary to advise with and, if possible, procure the co-operation of her sovereign co-State, Massachusetts—her old mother. For this purpose she despatched a minister plenipotentiary—in the person of her citizen Mr. Parks—who was regularly "*accredited*" by the Government of Massachusetts,

and negotiations actually opened, and successfully concluded, so far, at least, as relates to the adoption of the resolutions asserting the principles on which the State of Maine relied. Massachusetts was solicited not to speak out merely, but to stand side by side, shoulder to shoulder, with Maine in somewhat vigorous measures, if there should need be in the matter.

As this question of dividing the territory of a State without her consent has been, and will ever be with the States of the Union, a great and solemn question, and having alluded in this connection to the case of Virginia, pardon the digression if we state in this her ancient doctrine touching it. There was a time in her history when she had a question of disputed boundary with her sister State of Maryland. That State threatened to bring suit against her in the Supreme Court of the United States for a decision of the case, and to obtain by the compulsory process of that tribunal a partition of the sovereignty, jurisdiction, and territory of the Commonwealth. Virginia, under the gallant lead of that great statesman and jurist, Littleton Waller Tazewell, then her Governor, declared her unalterable purpose not to submit a question involving the extent of her sovereign limits to any tribunal not of her own selection. Speaking for Virginia, he said, after disclaiming any distrust of the perfect rights of Virginia, or of the integrity or intelligence of the forum selected to pass upon them: "If we could submit questions involving matters of such high concern to any judicial tribunal, perhaps none better could be selected than that before which the General Assembly of the State of Maryland desires to force us to appear. But it befits not sovereignty to submit the question of its own existence to any judiciary whatever. The same authority which is equal to despoil a State of any portion of its territory, contrary to its own consent, is also equal to annihilate the very being of the State itself. In consenting to appear and defend our rights before any tribunal not chosen by ourselves we virtually admit its authority to determine the matter in controversy, and as Virginia can never consent to hold her territory at the will of

any other, she never ought to give countenance to the idea that she will abide by the expression of any such will."

Mr. Jefferson, John Taylor, of Caroline, Judge Roane, and their compeers, in a more questionable case, utterly denied the jurisdiction of the Supreme Court, and denounced and repudiated its decision. We allude to the case of "Cohen *vs.* The State of Virginia," in the Supreme Court in 1821 (6 Wheat. R. 264).

It is very true that the Federal Government, through its Supreme Court, has taken jurisdiction of questions of boundary between States; but in those cases the parties voluntarily appeared, and the court acted very much in the character of arbitrators selected by the parties, to whose judgment they would, in good faith, be bound to submit. But the question is a vastly different one altogether whenever the Federal Government, through any of its departments, assumes such authority in violation of the dignity and the sovereignty of any one of the several States. How can any one at all familiar with the history of our Constitution believe that the States, in ratifying it, ever contemplated the submission to the Supreme Court or any other power of questions involving the *corpus* of their sovereignty? If the Supreme Court, as Governor Tazewell well says, can deprive a State of a part of her territory, it may, as far as the question of power is concerned, deprive her of all that she claims, and thus annihilate her very existence itself. Can any rational being suppose for one moment that any such thing could ever have been contemplated, either by the Convention that framed the Constitution or the States that adopted it?

But, it may be asked, if the Supreme Court has not jurisdiction in such a case, where is a final arbiter to be found? We answer, emphatically, *Nowhere.* The Constitution of the United States provides none, nor did it design to provide any. Our Federal Constitution is a compact between sovereign States, who reserved to themselves respectively all such questions. They are to be adjusted by negotiation, mediation, arbitration, and the other resources, which are almost infinite, of

amicable adjustment; and beyond this no remedy is provided, and it is scarcely possible any can be necessary. They are to be settled as they were in the case between Virginia and her good sister Maryland, not to mention any others.

In the case of Jonathan Robbins, John Marshall, afterwards Chief Justice. of the Supreme Court, expressly said that the jurisdiction of the Supreme Court "cannot be extended to political compacts, as the establishment of the boundary line between the American and British dominions."

Did not the Constitutional Convention of May, 1787, express the same opinion when it twice rejected propositions giving the power to settle disputes between the United States and a State respecting territory? Also rejected the proposition to decide generally controversies between a State and the United States?

Connecticut.

Let us hear from the State of Connecticut. We find Roger Sherman writing to John Adams, July 20, 1789: "I fully agree with you, sir, that it is optional with the people of a State to establish any form of government they please; and I am also of opinion that they may alter their form of government when they please, any former act of theirs, however explicit, to the contrary notwithstanding."

Judge Ellsworth, of Connecticut, afterwards Chief-Justice of the United States Supreme Court, speaking of the Federal Government, said: "It can only embrace objects of a general nature. I turn my eyes, therefore, for the preservation of my rights to the State governments. From these alone I can derive the greatest happiness I expect in life. This happiness depends on their existence as much as a new-born infant on its mother for nourishment."

In a speech of Mr. Hillhouse, a senator in Congress from Connecticut, in 1809, he thus expresses himself upon the nullity of the embargo: "However painful the task, a sense of duty calls upon me to raise my voice and use my utmost exertions to prevent the passing of this bill. I feel myself *bound in conscience* to declare, lest the blood of those who should fall in

the execution of this measure may lie on my head, that I consider this to be an act which directs a mortal blow at the liberties of my country; an act containing *unconstitutional* provisions to which the people *are not bound to submit*, and to which, in my opinion, they *will not submit*." What!! The people of Connecticut not bound to submit to the laws of their own Congress, if in *their* opinion they be not constitutional!!

We find Connecticut on the 1st of March, 1809, at an extra session of her Legislature, indulging, among others, the following resolutions: "That this assembly highly approve of the conduct of his Excellency the Governor in declining to designate persons to carry into effect, by the aid of military power, the act of the United States enforcing the embargo, and that his letter, addressed to the Secretary for the Department of War, containing his refusal to make such designation, be recorded in the public records of the State as an example to persons who may hold places of distinguished trust in this free and independent republic."

"That the persons holding executive offices under this State are restrained by the duties which they owe this State from affording any official aid or co-operation in the execution of the acts aforesaid; and that his Excellency the Governor be requested, as commander-in-chief of the military force of this State, to cause these resolutions to be published in general orders; and that the Secretary of State be and he is hereby directed to transmit copies of the same to the several sheriffs and town clerks."

Now, we find in these proceedings the doctrine of State allegiance in perfection. It was ordered to be proclaimed by the Governor, in his military capacity as commander-in-chief of the forces of the State, and also to be transmitted by her State secretary to her several executive officers everywhere, that their duties to their State "restrained" them from yielding either "official aid or co-operation," either allegiance or obedience, to the laws of the General Government at Washington, and, if need be, they must prepare to resist the acts of that government—her own Federal power. Is not this a fair

and impartial interpretation of the resolutions quoted? Again, the Constitution of the United States provides that "no State, except in time of war, shall keep on foot troops, &c., &c."

Connecticut availed herself of this negative clause of the Constitution, construed it into an express admission that any State in time of war *may* keep on foot troops, and actually organized *a corps elite* for her defence against foreign or *domestic* foes. Now, by this latter expression—"*domestic foes*"—it was well understood at the time that she meant to include the Federal Government and its officers. We might mention upon the authority of a distinguished New England statesman of that day—John Quincy Adams—some other things which our sister Connecticut said and did, in conjunction with her other New England sisters, in a memorable convention called "the Hartford Convention," about these embargo and war times, in support of the great theory and practice of State sovereignty and State allegiance. But as these sayings and doings constitute a part of her *arcana*, and as it would no doubt be disagreeable to the sister to have such reviewed and laid bare in these times of her consolidation triumph and glory, and as the politeness of such a disclosure of her private affairs might be questioned, we respectfully forbear to pry into her State secrets further than to give a few extracts from the journal of the Hartford Convention.

Rules of proceeding adopted 15th December, 1814, the first day of the meeting.

1. The most inviolable secrecy shall be observed by each member of this Convention, including the secretary, as to all propositions, debates, and proceedings thereof until this injunction shall be suspended or altered.

2. The secretary of this Convention is authorized to employ some suitable person to serve as a door-keeper and messenger, together with a suitable assistant, if necessary, *neither of whom is at any time to be made acquainted with any of the debates or proceedings of the Board.*

January 3, 1815.

After the acceptance of the final report, on motion,

Resolved, That the injunction of secrecy in regard to the debates and proceedings of this Convention, except in so far as relate to the report finally adopted, be and hereby is *continued.*

N. B.—This injunction of secrecy was never removed. The Convention adjourned the 5th of January, 1815.

Extracts from the final report of the Convention.

Finally, if the Union be destined to dissolution, by reason of the multiplied abuses of bad administrations, it should, if possible, be the work of peaceable times and deliberate consent. *Some new form of confederacy should be substituted among those States which shall intend to maintain a federal relation to each other ;* therefore

Resolved, "That it be and hereby is recommended to the *legislatures* of the several States represented in this Convention to adopt all such measures as may be necessary effectually to *protect the citizens of said States* from the operation and effects of all acts which have been or may be passed by the Congress of the United States which shall contain provisions subjecting the militia or other citizens to forcible drafts, conscriptions, or impressments not authorized by the Constitution of the United States." Such were the proceedings of the New England States in unjustifiable opposition to the regular and necessary war measures of the General Government at a time when that Government was in the extremest peril and embarrassment in defending our country from the assaults of a gigantic foreign adversary. And the proceedings of the War Congress of June 4, 1812, show that it was a measure of the *South* and *West* to protect the interest of the *North.*

But what was the conduct of the much-abused and down-trodden State of South Carolina at this critical conjuncture? Governor D. R. Williams, of that gallant State, on the 22d of December, 1814, addressed a letter to the Secretary of the United States Treasury, in answer to a letter received by him

from Major-General Pinckney, informing him that the funds of the General Government at his disposal *were exhausted*, and said: "I have the pleasure to inform you that two hundred and sixty thousand dollars have been put at the disposition of the General Government by the Legislature last evening. I hope it is unnecessary to add that my individual and official efforts will not be wanting in aiding the Government whenever in my power." Thus it is a historical fact that at the very time of the Hartford Convention, and in one of the darkest periods of our country's existence, the embarrassment of the Union was communicated to the Legislature of South Carolina in the morning, and before their adjournment in the evening the representatives of the people of South Carolina freely and at great sacrifice opened their treasury to relieve and sustain the Union.

The embargo and non-intercourse laws grew out of the war power of the United States Government, and was, outside of the Hartford Convention movement, universally regarded at that time as a necessary war measure—of defensive as well as of offensive hostility—and, therefore, as most undoubtedly within the powers of Congress.

We stood in a relation to the world which no other nation occupied, as a great *granary*, from which many other countries were supplied, and some had been occasionally fed. To withhold for a time, by means of the embargo and non-intercourse acts, those necessary supplies from a national foe committing aggressions against us, was a measure of fair, obvious, and effectual hostility on the part of our General Government, by which the offending nation might be reclaimed to a just course of conduct toward us. And yet these very States that were then engaged in the Hartford Convention in adopting measures to withdraw their resources from the aid of the Federal Government, and to embarrass and resist it in all possible ways and means, are now vituperating and vilifying that grand hero and patriot, Robert E. Lee, and his splendid and noble compeers in arms, as traitors and perjurers, simply because they bid a honorable, though sad, farewell to the old regulars of the

United States army and navy and joined their respective States in a just, legitimate, and boldly-avowed opposition and open-field resistance to an unconstitutional and unnecessary war against those States—not a foreign foe, but their own sisters—in the midst of the peace, prosperity, and highest power of the Federal Government.

It is worthy of especial notice that these Hartford Convention States, so to call them, were in 1814 anxious and urgent for an amendment of the Constitution of the United States "requiring the concurrence of two-thirds of Congress to declare war or authorize acts of hostility against any foreign nation, except in defence and in cases of actual invasion," and yet, in 1861, eagerly rushed forward to invade the rights and peace of their own sister Southern States at the instance of a mere executive proclamation, issued in the absence of Congress and in open violation of the Federal Constitution. General Lee and his old army and navy comrades from the South in 1861, had but to take a casual review of the political history of Massachusetts and the rest of her sister Eastern States from the adoption of the Constitution of the United States to the war of 1812–'14, and on through the period of the annexation of Texas, and that of the passage of the fugitive-slave law of 1850, to find abundant teachings in favor of State allegiance, State sovereignty, the separation of the States, and the formation of a Northern confederacy. Whether this latter project was ventured by its promoters and advocates before the public earlier than 1796, we are not aware. But of its promulgation in that year in the elaborate essays of Pelham—the joint production of an association of men of inordinate wealth, great energy, and of the first talents and influence in the State of Connecticut, and well approved and sustained in the Eastern States generally—is indubitable and well known. And from that time for eighteen years onward the most unceasing, unpatriotic, and virulent endeavors were used by leading and distinguished editors, preachers, and politicians, in and out of office, to poison the minds of the people of the Eastern States towards and to alienate them from the people of the Southern

States. And it is important to know that when these efforts to sow discord, jealousy, and hostility between the different sections of the Union, in order to accomplish their favorite and darling object of a dissolution of the Union, first began in the New England States, every feature in the affairs of the country was exactly according to their fondest wishes. The immortal and good Washington was President; John Adams, an Eastern man, was Vice-President. There was then no "Virginia dynasty," no "French influence," no "embargo," no "non-intercourse," no "terrapin policy," no "Democratic madness," and no "war." The noble, the august, the splendid fabric of our Union, and the unparalleled form of our government, were in the hands and in the keeping of rulers of their own choice.

Before proceeding further we deem it proper to say, by way of parenthesis, that in the foregoing allusions to England a wide distinction is always to be made between the English Government and the English people. For while England is most rapacious and unjust as a nation, she stands proudly pre-eminent in the sterling moral worth and the elevated, practical character of her people. The general character of England, then, should not be contaminated with the avarice, injustice, and ambition of her statesmen and warriors. While England and our own Union endure, they have, in spite of manifold differences, political and social, an unity in the solemn guardianship of religious and constitutional freedom—the only freedom which has been other than a curse to mankind. They are ennobled by many of the same ancestral memories, associated by the same language and literature, and encouraged by the same hopes of civilization.

New York State.

The Convention of the State of New York ratified the Constitution of the United States only on the condition "that the power of the Government may be reassumed by the people (of New York, of course, for she was speaking for herself only) whenever it shall become necessary to their happiness." Her

great statesman, Alexander Hamilton, declared in the Assembly of New York State: "Each State possesses in itself full power of government, and can at once, in a regular and constitutional way, take measures for the preservation of its rights." Again, he said in his letter to the people of New York, written for the purpose of persuading them that the sovereignty of the States was not touched by the new Constitution: "But it is said that the laws of the Union are to be the supreme laws of the land. But it will not follow from this doctrine that the acts of the larger society (the Federal Union) which are not *pursuant* to its constitutional powers, but which are invasions of the residuary rights of the smaller authorities (the States), will become the supreme law of the land. These will be merely acts of usurpation and will deserve to be treated as such." Again, he said in the twenty-eighth number of the *Federalist:* "It may safely be received as an axiom in our political system that the State Governments will in all possible contingencies afford complete security against invasions of the public liberty by the national authority. Projects of usurpation cannot be masked under pretences so likely to escape the penetration of select bodies of men as of the people at large. The Legislatures will have better means of information. They can discover the danger at a distance; and, possessing all the organs of civil power and the confidence of the people, they can at once adopt a regular plan of opposition in which they can combine all the resources of the community."

Chief-Justice Jay said that "thirteen sovereigns were considered as emerging from the principles of the Revolution, combined by local convenience and considerations."

In the Legislature of New York, on the 8th of November, 1824, Mr. Tallmadge, in the House of Assembly, offered a resolution against the right of Congress to license and to demand tonnage duties from canal-boats in that State, which was adopted almost unanimously, declaring that, "Whereas it appears to this Legislature, after due consideration, that the claim on the part of the United States to require boats which navigate our canals to be enrolled or licensed to pay tonnage

duties is a claim not founded on any legal right, and in regard to the circumstances to which it is made such claim is so evidently unjust and oppressive that *the interference of this State* is called for *in defence* of its citizens; therefore

Resolved (if the Senate concur), That the senators of this State in the Senate of the United States be directed, and the representatives of this State in the House of Representatives of the United States be requested, to use their utmost endeavors to prevent any such unjust and oppressive exaction for tonnage duties on boats navigating the canals from being carried into effect."

This was the beginning of New York's resistance. A year and a half after this resolution her senator (Mr. Van Buren) in the United States Senate gave notice that his State "would resist to the last extremity." We here give his language in that body May 19, 1826: "From that time (1824) to the present, or until very recently, no steps have been taken by the Government to enforce its claim, nor in behalf of the *State to shield herself against injustice.*" And further on in the course of the same remarks he said: "The act itself was *unauthorized* by the *Constitution* of the United States—an encroachment on the rights of the State, which she *ought* and *would* resist to the last extremity." Now, we ask, What more did Mr. Calhoun ever declare in behalf of his State? What more could any State do than "to resist to the last extremity"?

The Rochester *Telegraph* of that period has this to say of the demand of licenses at the time of its occurrence: "We regret to learn that the collector of the United States revenue at Buffalo requires a coasting license from all the canal boats that clear from that place. It was hoped that after the eloquent and conclusive arguments of General Tallmadge on *State rights*, *the strong expression* of the Legislature in 1824, and the resolution of Mr. Martindale in Congress, there would be no more encroachments of the General Government upon the artificial waters of this State."

Congress did not despise her application for redress, or New

York would doubtless have confirmed the *threat* of her senator (Van Buren), who was speaking under her *instructions*.

Ohio.

In our examination of the proceedings of the Ohio Legislature of 1820 against the United States Bank we find the views of the New England States referred to by us in the preceding pages of this discussion most ably and boldly sustained. In those proceedings she approved and adopted as her own the Virginia and Kentucky resolutions of '98 and '99, and declared that their principles had been "recognized and adopted by a majority of the American people." She protested "against the doctrine that the political rights of the separate States that compose the American Union and their powers as sovereign States may be settled and determined in the Supreme Court of the United States, so as to conclude and bind them in cases contrived between individuals, and where they are—no one of them—parties direct." And she passed an act denying to the bank all protection from the State laws and depriving it of almost all civil rights. It was recommended to her by a committee of her Legislature to forbid by law "the keepers of our jails from receiving persons committed at the suit of the Bank of the United States or for any injury done them, prohibiting any judicial officers from taking acknowledgment of conveyances where the bank is a party or when made for their own use, and our recorders from receiving or recording such conveyances; forbidding our courts, justices of the peace, judges, and grand juries from taking cognizance of any wrong alleged to have been committed upon any species of property owned by the bank, or upon any of its corporate rights or privileges, and prohibiting our notaries public from protesting any notes or bills held by the bank or their agents, or made payable to them." And following up this recommendation, she did pass just such a law through her Legislature. Could anything have been more thoroughly *searching* than these proceedings? It will be seen that in them no such common arbiter as the Supreme Court of the United States is

allowed for a moment, but that the great State of Ohio proclaimed to all concerned that, in a question between herself and the General Government, she was judge in her own political character, and instructed her officers, by a solemn act of her Legislature, that in such a contest her orders alone were to be acknowledged—that their allegiance and their consequent obedience were due to her and to her alone. Her distinguished son, the Hon. Judge John McLean, wrote to a gentleman in the State of North Carolina on the 23d of October, 1834, from Knoxville, as follows:

"In my view no powers can be exercised by the Federal Government except those which are expressly delegated to it; and I should think that the experience we have had ought to convince every one that any extension of the Federal powers must endanger the permanency of the Union." Again he writes: "But if a political power be asserted by the Federal Government which is controverted by a State, and which affects the interest of such State, and it cannot be made a judicial question under the Constitution or laws of the Union, there is no tribunal common to the parties, and in such a case effect cannot be given to the power. The decision of a sovereign State in such a case is as good as the decision of the Federal Government, and of necessity there must be mutual forbearance. An unconstitutional act of Congress imposes no obligation on a State or the people of a State, and may be resisted by an individual or a community. No one, I believe, will controvert this." This last is exactly the view that was taken by Chief-Justice Parsons, of Massachusetts, as we have already seen under the head of "Massachusetts." The whole letter of Judge McLean is filled with just such sound State rights and constitutional doctrines. And now, my readers, who was Judge McLean? He was an associate justice in the Supreme Court of the United States, so appointed by President Jackson in 1829. Rather a Whig than a Democrat, when his name was suggested by a friend to an eminent Whig as the right man for the Whigs to make President of the United States in 1848, he replied: "Do not wish that; Judge McLean is canon-

ized; if he were taken away from the Supreme Court, where is the guardian of the Constitution?" It is well known that there were other such guardians on and off the Supreme Bench at the time, but such was the compliment paid to the virtue and talents of the Judge in that day after a trial of him for seventeen years. His whole public and private life presented one bright page of ability, integrity, and honor, and threw a lustre on the entire profession to which he belonged.

Pennsylvania.

We now proceed to close this discussion of the great question of allegiance, based upon the actions and declarations of our Northern sister States and their statesmen, by presenting a few extracts from the public speeches of some of the eminent statesmen and judges of the old Quaker State—the great State of Pennsylvania—and from her own well-authenticated public records.

James Wilson, afterwards one of the supreme judges of the United States, when a member of the Convention of Pennsylvania, in endeavoring to persuade the people of Pennsylvania, there assembled through their representatives, to adopt the Constitution, said: "Those who ordain and establish have the power, if they think proper, to repeal and annul." That is, they (the people of Pennsylvania) would lose none of their sovereignty by the act of ratification.

The celebrated John Dickinson, of the same State (Pennsylvania), in urging the people of the old thirteen States severally to ratify the Constitution, wrote: "Why should we be thus alarmed, when we know that the rights to be delegated by the several States to the Confederation are simple, defined, and so limited to particular objects that they cannot possibly be applied by any construction to other objects, without such a distortion of interpretation and such a violation of propriety as must offend every sound head and every honest heart."

Again he says, in the same written address: "As some persons seem to think a *Bill of Rights* is the *best security* of rights, the *sovereignties* of the several States have *this* best security by the

proposed Constitution, and *more than this* best security, for *they* are not *barely* declared to be rights, but are taken into it as *component parts* for *their* perpetual preservation—by themselves. In short, the government of each State is, and is to be, sovereign and supreme in *all* matters that *relate* to each State *only.*"

Again, in speaking of the interference of the Federal Government with the respective jurisdictions of the several States, he says: "An instance of such interference with regard *to any single State* will be a dangerous precedent *as to all*, and therefore will be guarded against *by all*, as the trustees or servants of the several States will not dare, if they retain their senses, so to violate the *independent sovereignty* of their respective States—*that justly darling object of American affections*—to which they are responsible, besides being engaged by all the charities of life."

Again he says, in speaking of the *varied representation* of sovereignties *and* people in the Constitution then proposed: "It has been said that this representation was a mere compromise. It was not a mere compromise. *The equal representation of each State*, with equal suffrage *in one branch of the legislature*, was an original substantive proposition, made in the Convention at Philadelphia in 1787, very soon after the draft offered by *Virginia*, to which last-mentioned State United America is much indebted not only in other respects, but for her merit in the origination and prosecution of this momentous business.

"The proposition was *expressly* made by the delegate who brought it forward upon *this principle:* that a territory of such extent as that of *United America* could not *be safely* and *advantageously governed* but by a *combination* of republics, each *retaining* all the rights of supreme sovereignty, *excepting* such as ought to be contributed to the Union; that for the securer *preservation* of their sovereignties they ought to be represented in a body by themselves—meaning the Senate of the United States—and with *equal suffrage;* and that they would be annihilated if both branches of the legislature were to be formed

of representatives of the people in proportion to the number of inhabitants in each State."

Again he says: "America is, and will be, divided into several sovereign States, each possessing every power proper for governing *within its own limits for its own purpose*, and also for acting *as a member of the Union*.

"A stroke, a touch upon any part," he says, "will be immediately felt by the whole."

When the monarchists of the Constitutional Convention who labored for the destruction of State sovereignty had thrown everything into confusion and downright disorder, and Dr. Franklin had advised the Convention to go to praying, and the members were returning home in despair of anything being accomplished but mischief, Gunning Bedford, a noble patriot of the State of Delaware, turned the fortune of the day by warning them if they dared to touch the sovereignty of his State, that State would call in the aid of foreign powers to protect her sovereignty; and so the Constitution passed, explicitly recognizing that sovereignty by the organization of the Senate, and not in the least impairing it by the representation of the people of each State in the House of Representatives. The sovereignty and equality of the several States were expressly guarded by that clause of the fifth article of the Constitution of the United States which provides "that no State, without its consent, shall be deprived of its equal suffrage in the Senate." It is here seen that while all other rights are confided to that power of amendment which is reposed in three-fourths of all the States, this *right* is entrusted *only* to the separate, independent, and sovereign will of each State—each State, in its own case, having an absolute negative upon all the rest.

If we look to the Constitution of Pennsylvania, September 2, 1790, article 8, we will find the following provision: "Members of the General Assembly and all officers—executive and judicial—shall be bound by oath, or affirmation, to support the Constitution of this Commonwealth, and to perform the duties of their respective offices faithfully." Here, then, in the early history of her State Government near up to the patriotic times

of the Revolution and the formation and adoption of the American Constitution, when the true intent and interpretation of that instrument was best known to her and understood by all, we discover her, in her form of oath, leaving out the Constitution of the Union, ignoring the "General Government," and demanding for her citizens exclusive allegiance. Her first Constitution was adopted in 1776, her second in 1790, and her third in 1838.

In the celebrated case of Gideon Olmstead what do we observe to be the action of her Governor, Simon Snyder, *in pursuance of an act of her General Assembly*, passed on the 2d day of April, 1803? Among other things in his military order to General Michael Bright, commander of the First brigade of the First division of the Pennsylvania militia, the Governor said:

"I, Simon Snyder, Governor of the said Commonwealth, reposing special trust and confidence in you, Michael Bright, commander of the First brigade of the First division of the Pennsylvania militia, do authorize and require you immediately to have in readiness such a portion of the militia under your command as shall be sufficient for the purpose expressed in this order, *and to employ them to defend the persons and property* of the said Elizabeth Sergeant and Esther Waters *from and against any process* founded on the decree of the said Richard Peters (United States judge), and in virtue of which *any officer* under the direction of *any court of the United States* may attempt to attach either the *persons or property* of the said Elizabeth Sergeant and Esther Waters."

Does not this action of the chief executive officer, taken by the direction of her Legislature, clearly establish her opinion to be that she was the sovereign of her citizens, to whom she owed protection against the "General Government," and from whom she claimed allegiance in return for that protection? If this were not so, what other ground could have warranted such a stand against the decree of the General Government "pronounced through one of its courts"? It is true that in this particular case Pennsylvania was in error in denying to the

Federal courts full jurisdiction in admiralty cases, and that she gracefully yielded her opposition. But in obedience to whose opinion did she abandon her high position? To that of her distinguished and trusted citizen and officer, Chief-Justice Tilghman, who in his day was regarded as one of the brightest judicial stars in America. He sustained the United States courts in this *particular* case, we all know, but in his opinion he fully recognized the grand *principle* embodied in the act of the General Assembly of his State and the military order of the Governor thereof. He expressly declared that in a case *clearly* made up he would have exercised, in the name of Pennsylvania, control over the prisoner, Mrs. Sergeant, whose person the United States marshal, by an evasion of General Bright and his militia, had successfully attached. To employ his own language in that opinion, he said "that the *State courts* should, in cases brought properly before them, *give redress*. There is no law which forbids it—their *oath of office exacts it.*" That is, defy the proceedings of the "General Government" against the citizens of Pennsylvania, whose sovereign she is and to whom their allegiance is due. Again, in the well-known case of "The Commonwealth vs. Cobbett," the Supreme Court of Pennsylvania, with Chief-Justice McKean at its head, *unanimously* overruled the motion of the defendant to remove his case into the Federal court *on the ground that the sovereign State of Pennsylvania could not, on account of its dignity*, be carried before the Federal court. This grave and momentous question was debated in the Virginia Convention called to consider the adoption of the Constitution of the United States, as proposed to the several States by the general convention at Philadelphia, by Mason, Madison, Henry, and Marshall, the ablest of American statesmen. Mason and Henry, with a sagacity indeed remarkable, suggested that the day might come when a Federal court, under *the letter of the Constitution*, might presume to summon a sovereign State to its bar and assume authority to sit in judgment upon her rights. Madison and Marshall opposed the idea with great vehemence. Marshall, afterwards Chief-Justice of the United States Supreme Court

bench, actually denounced it as an irrational supposition "that the sovereign power shall be dragged before a court." Said he: "I hope no gentleman will think that a State will be called at the bar of the Federal court." This was precisely the ground taken by that grand old man, Governor Hancock, in 1793, in respect to a summons of the Circuit Court of the United States served on him as principal officer of that State, and in which position he was supported by the Legislature of his State and endorsed by his biographer, John Adams. In 1812 we find Governor Strong, of Massachusetts, occupying similar ground. In the case of Hunter and Martin, 3d Dallas, 52, Judge Roane, of Virginia, alluding to the case of Pennsylvania and Cobbett, said: "It contains no principle which every friend to the federative system of government will not readily subscribe to; it exhibits no sentiment alarming to any but the friends of consolidation." This decision of the Supreme Court of Pennsylvania, as delivered by Chief-Justice McKean, in the month of December, 1798, may be found in 3d Dallas Reports, page 473. We all have read of the manner in which Pennsylvania treated an excise officer of the United States in 1791, in what has been styled her "Whiskey Insurrection," and the proceedings of her Legislature on that celebrated occasion. Here, then, was the sovereign State of Pennsylvania, as may be seen from the extracts which we have made from her Constitution, her Legislature, and judicial records, claiming the allegiance of her citizens against all powers whatsoever, and taking upon herself to decide what was the extent of the Federal authority. In fact, we find that every State in this Union which had at any time prior to the Civil War been *oppressed* or even *insulted* in her dignity by Federal tyranny had in some shape or other invariably asserted this her sovereign right, though in the year 1861 it was and has since then been convenient for the Northern States—always claiming it for themselves, however—to forget and to deny its existence in the Southern States, and unconcernedly or interestedly and *cruelly* to disregard their complaints of their grievances and to trample with the red hoofs of war upon their sacred constitutional

and reserved rights. And we see, too, that the honor of having originated this American doctrine belongs especially to Pennsylvania, Massachusetts, and Connecticut—honest old Pennsylvania, as she used to be called—the land of Quakers and of peace in those good old days—being the parent.

And it could hardly in those days have been regarded as incompatible with the rights or the safety of the Union or it would not have been originated, as it was, by a patriot of 1776—Judge Ross—who was one of the delegates of Pennsylvania that signed the immortal Declaration of Independence. The Southern States, then, can only claim to divide the glory with the North on this great point. We have now gone through with our account of some of the principal official acts and opinions of some of the principal of our Northern sister States in support of the action taken by the Southern States, and the necessarily consequent conduct of those of their citizens who happened to be in 1861 in the immediate service of the General Government of the United States.

In the historical details, as well as in our comments, we have honestly endeavored to pursue the good advice of Othello:

> "Naught extenuate, nor aught set down in malice."

And we have especially aimed to keep in mind faithfully that it is not magnanimous either in individuals or nations to treasure the resentments of war after the seal of peace has been affixed.

> "A brave man knows no malice, but at once
> Forgets in peace the injuries of war,
> And gives his direst foe a friend's embrace."

Our sole object has been truth—historical truth—which we hope and believe we have steadily followed without undue bias or one grain of sectional prejudice. But it is said that General Robert E. Lee and those who departed with him from the Federal command had taken each for himself an oath to support the General Government of the United States. Well, it is true that they did swear to support that Government in its strict pursuit of its legitimate ends as defined by the Constitu-

tion of the United States, and as might be interpreted by their respective States, without whose authority and permission they would never have taken such an oath at all. It was simply an oath of office to be kept only so long as the incumbent remained in the service, and carried with it *no allegiance* in its technical sense; for that, as we have seen upon the authority of Northern States and statesmen, belonged exclusively to their respective States. Indeed, were those officers any other than representatives of their several States in the army and navy which belonged to those States in common with the Northern States? Did not their respective States supply each its proportionable share of the expenses necessary to establish and maintain the United States army and navy? Does any man or set of men suppose for an instant that the Southern States, or either of them, or the Northern States, or either of them, furnished men and money and property to their general agent and servant at Washington—the General Government—with which to overrun them and scatter desolation and blood and ruin over their territory and population, and that those men, who are their own loyal citizens, took a solemn oath upon their consciences with any such intent? The *idea even* is too preposterous for the credulity of the most simple-hearted and credulous. They were there only as their agents to carry out their behests as laid down in the compact between the States, and the laws made by Congress in pursuance of that compact, and subject to be recalled by them *whenever in their judgment* that compact had been violated in letter and in spirit.

Daniel Webster declared that "a compact broken on one part is broken on all," and proceeded to argue that if the North really refused to execute in good faith that clause of the Constitution which provides for the rendition of fugitive slaves the South would be absolved from its share of the compact of the Union. This, it is well known, is exactly what the North did do, and thus, according to Mr. Webster, thereby absolved the South from all obligation to observe the compact between the States which formed the Union. And this very refusal on the part of the Northern States to obey the constitutional com-

pact in that particular was exercised by them down to the very beginning of the great civil war in pursuance of their ancient doctrine of State sovereignty and State allegiance and their peculiar modern doctrine of the "Higher Law."

When analyzed we find that the oath of an officer or soldier of the United States army and navy was, after all, but an oath of obedience to his own State, to whom his allegiance was alone due. This, we think, may be clearly illustrated by a supposed case—not at all impossible. Suppose in 1861 the Northern States had declined to make war on the Southern Confederacy, but had contented themselves with declaring such States to be simply beyond the pale of the Union—in peace friends, in war enemies—as Wendell Phillips, Greeley, and others of their brain-men counselled them to do? Where, in this case, would General Lee and his brave fellow-officers in the old army and navy hailing from the Southern States have been found, think you? In the then foreign confederacy of the Northern States? We cannot believe it. Unquestionably they would have been found in the new confederacy of which their respective States would have formed a part. Would this have been pronounced *perjury* and *treason* on their part to the old United States Government, to whom they had taken this much-vaunted oath? Surely, surely not. But again, let us suppose that this new Southern Confederacy had afterwards agreed to dissolve itself into as many distinct governments as it had States, where would these officers then have been found? Would they not have abided with and followed their respective States? Would not the same have been true of the officers of the United States army and navy from the respective Northern States in the event of a final dismemberment of the United States into its original elements—the States? Does not this show plainly where the allegiance of the citizen of a State resides? Does it not prove indisputably that in all possible changes and revolutions it belongs to his State, and that while his State may by her act release him from other obligations to which she has subjected him, that no *authority here below* can divest his State of his obligations to her? What said the

Continental Congress upon this very point? We will remind you. On the 24th of June, 1776, in anticipation of the Declaration of Independence then being prepared, the Congress declared by resolution "That all persons abiding within *any* of the *United* Colonies and deriving protection from the same owed allegiance to the said laws, and were members of such colony; and that all persons passing through or making temporary stay in *any* of the Colonies, being entitled to the protection of the laws during the time of such passage, visitation, or temporary stay, owed, during the same, *allegiance thereto.*" This ought to be conclusive to every intelligent and impartial mind that the duties of protection and allegiance are reciprocal; that the right of allegiance belongs to the sovereignty, and the right of protection to the citizen; that every citizen owes obedience to the laws of his State, and is entitled therefor to protection and security in his life and property.

Reverdy Johnson, a distinguished Republican senator, and a constitutional lawyer of the first rank, hailing from the State of Maryland, said on the 11th day of January, 1866 (months after the war), in the United States Senate: "I am sure no member of the Senate would doubt that there is no power given to Congress or to any other department of the Government to make war against any State." He then supported his opinion by the following quotation of the language of Justice Graham, of the Supreme Court of the United States: "By the Constitution alone Congress has the power to declare a national or foreign war. It cannot declare war against a State or any number of States by virtue of any clause in the Constitution." Senator Johnson adds: "We have the unanimous opinion of the Supreme Court of the United States that domestic trouble and insurrection and refusal to obey the Constitution of the United States is not a state of things which authorizes Congress to declare war against the State in which such insurrection exists. It is not a condition of things in which the President has any power to carry on war by virtue of the war power." It cannot now be said that it was a war against *individuals* in insurrection merely; for the proclama-

tions of President Lincoln and the acts and resolutions of both houses of Congress were declared to be against "rebellious States," and the whole bloody and illegal and unconstitutional power wielded by the Federal Government was aimed at the organic life of the States. Instead of raising by executive proclamations the standard of civil war and shedding the innocent blood of his oppressed countrymen who simply asserted the sovereignty of their respective States and resisted their prostration, it was in the power of President Lincoln to recommend the call of a convention of the States of the Union that formed the Constitution, and who were the fit and proper judges of questions involving sovereignty between themselves as sovereigns, and to have wisely and patriotically invoked them, as the most exalted tribunal on earth, to restore the Constitution to its virgin purity and to bring back and preserve the Union in its unsullied brightness.

This peaceful and rightful and constitutional remedy the great and patriotic Jefferson would have advised and pursued. But, no! exclaimed Mr. Lincoln. "The Southern States are in rebellion; my revenue is at stake; they must be put down!" And thus he consecrated his usurpations by the innocent blood of those he would oppress. State constitutions and State laws were overthrown; State legislatures dispersed; State archives seized and destroyed; a State capital wantonly and ruthlessly burned; State territory torn and divided and a new State formed out of it, as in the case of Virginia and West Virginia, and in reckless violation of the Constitution of the Union, as we have already shown in a prior part of this discussion. Indeed, no appliances of a most unjust and inexcusable *war against States* were left unemployed, notwithstanding the solemn declarations and decisions of lawyers, statesmen, patriots, sovereign States—North as well as South—and the Supreme Court of the United States, "that the Constitution gives the Federal Government no power to make war against a State." The Southern States in "*Rebellion*," indeed! Against whom did they rebel? Against whom could they have rebelled? Rebellion means the resistance by an inferior to the lawful authority

of a superior. It implies the violation of allegiance. To what power did the Southern States, or either of them, owe allegiance? The very idea is preposterous and utterly inadmissible in the science of politics that a sovereign State can owe *allegiance* to any earthly power, and therefore be capable of committing treason, rebellion, or any crime whatever in any legal or political sense. The idea of treason or any other crime whatever carries along with it invariably that other idea of a tribunal before which the culprit can be arraigned. Is there a conceivable or possible tribunal existing anywhere before which a sovereign State could be arraigned and tried for treason or rebellion or any other crime in the calendar of crimes? Surely not. No individual, then, who obeyed the command of his State to resist an unconstitutional invasion by President Lincoln and his Congress in 1861–'65 can be deemed guilty of treason or perjury, or both, within the meaning of the United States Constitution. For the State to which his allegiance was due, as we have shown by the authority of Northern States and statesmen and others who were high in the confidence of the Lincoln administration, had not given the Federal Government—its own creature—power or authority to coerce her by arms, and his resistance of Federal armed coercion, by her command, was not an act of treason against the United States Government according to any fair interpretation of the Constitution of the United States, and which fair interpretation we have labored to arrive at and to present to you, in accordance with the true and fundamental rule of all statutory construction, and the one which overrides all others, which is, to seek the intention of the legislators who framed the law.

Mr. Blackstone, in his Commentaries (pages 59–60, Volume I), says: "As the meaning and intention of the Legislature, when ascertained, is the law itself, it follows necessarily that such intention must be referred to the time of its enactment; and the terms and language used to express the intention must be taken as *then understood* by those who employed them, and not according to any subsequent definition or acceptation varying from the *then settled*, received meaning." Again he

says, page 70: "No subsequent judge can alter or vary from the law according to his private sentiments, but according to the known laws and customs of the land; not delegated to pronounce a new law, but to maintain and expound the old one." And these rules of interpretation as laid down by this eminent legal authority have been ofttimes affirmed by the Supreme Court of the United States, as expressed in the following words of Justice Baldwin: "The Constitution ought, therefore, to be expounded, as all such grants and charters are, according to what the law was at the time of making them."

The illustrious Jefferson said: "On every question of construction carry ourselves back to the time when the Constitution was adopted; recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text or invented against it, conform to the probable one in which it was passed." Yes, let all concerned do this, as that wise statesman and great constitutional lawyer and patriot has advised; look to the explicit *contemporaneous declarations* in the convention which framed the Constitution and in those that ratified it, and elsewhere expressed in different forms of language, but all tending to the same conclusion, and we ask if there can be a doubt left on the mind of any fair and reasonable man as to the true intent of the framers of the Constitution respecting this great question of State allegiance and its reciprocal duty—State protection?

We have unfolded "records from ancient times derived," and brought out into the light of the present day doings and sayings of the leading States and statesmen of the North upon this question, to point out their inconsistency in ever attempting in the past, and still continuing their efforts in the present day, to degrade conduct and doctrines which they in a large measure originated and to which they gave currency and authority by their legally authenticated public documents and public utterances. We have gone among their own antique records and have recited therefrom with impartiality, fidelity, and accuracy, we hope and believe, their own actions and declarations, in successful vindication of General Robert E. Lee

and his comrades who retired with him from the United States army and navy in 1861, from the foulest and most monstrous slanders which the Northern people, with some honorable exceptions, in the very prodigality of scandal have heaped upon their names and memories, against whom, we believe, they were never heard to express the smallest feeling of unkindness. It is true, like the gallant veterans that they were, they made no child's play of the war in which they had taken up defensive arms; but their weapons were not dipped in poison, nor did they stab in the dark; they asked that daylight and the sun might witness their victory, or grace a defeat that should, at least, be undeserved. They flung the javelin of Achilles with a steady hand, but it was with hearts free from all malevolence and guile. When the battle was over they carried no reeking malevolence in the ambush of their own bosoms to be brought out on some safer occasion for vengeance. It was not for malice or for vengeance that they fought, but for the rightful sovereignty and freedom of their respective States, to whom their allegiance was due.

General Robert Edward Lee.

Illustrious and loyal Virginian! When in the spring-time of the ever-to-be-remembered year of 1861, the great question arose involuntarily in your mind, "What are the obligations which the action of my old mother State, Virginia, creates in me, and what are the duties I am thus called on to perform?" your answer could not be slow or difficult! To you who inherited glory, the line of your duty was instantly prescribed.

The shades of your patriotic and distinguished Revolutionary ancestors appeared to your vision and pointed out to you the only path which you could and should tread. Among the brave and patriotic names celebrated in the early councils of Virginia and America, not one is invested with a purer lustre than the name of Lee. It is radiant all over with the glories of the Revolution of '76. And it has been most eloquently said of the reputation of Richard Henry Lee, "that the fame of almost all his distinguished brothers was lost in the bright-

ness of its blaze. It has been illustrated by the sword, by the pen, and by the tongue." But what shall be said of the reputation of one of his illustrious line—Robert Edward Lee? Steeped in the red and black of Treason and Perjury, as his enemies declare? What monstrous and wicked absurdity and stupidity to think it!

No! No! The brightness of the glory of Richard Henry Lee, in the character and fame of Robert Edward Lee, is awakened as if with accumulated lustre, shedding a splendor over the name of Lee unknown in any previous age!